

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

FRANK CARBONE, ANDREW CORZO,  
SAVANNAH ROSE EKLUND, SIA  
HENRY, ALEXANDER LEO-GUERRA,  
MICHAEL MAERLANDER, BRANDON  
PIYEVSKY, KARA SAFFRIN, and  
BRITTANY TATIANA WEAVER,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

BROWN UNIVERSITY, CALIFORNIA  
INSTITUTE OF TECHNOLOGY,  
UNIVERSITY OF CHICAGO, THE  
TRUSTEES OF COLUMBIA UNIVERSITY  
IN THE CITY OF NEW YORK, CORNELL  
UNIVERSITY, TRUSTEES OF  
DARTMOUTH COLLEGE, DUKE  
UNIVERSITY, EMORY UNIVERSITY,  
GEORGETOWN UNIVERSITY, THE  
JOHNS HOPKINS UNIVERSITY,  
MASSACHUSETTS INSTITUTE OF  
TECHNOLOGY, NORTHWESTERN  
UNIVERSITY, UNIVERSITY OF NOTRE  
DAME DU LAC, THE TRUSTEES OF THE  
UNIVERSITY OF PENNSYLVANIA,  
WILLIAM MARSH RICE UNIVERSITY,  
VANDERBILT UNIVERSITY, and YALE  
UNIVERSITY,

Defendants.

Case No. 1:22-cv-00125

Judge Kennelly

**MOTION FOR LEAVE TO SUBMIT**  
**STATEMENT OF INTEREST OF THE UNITED STATES**

The United States of America, by its undersigned attorneys, moves to submit a Statement of Interest in this case pursuant to 28 U.S.C. § 517, and in support states as follows:

1. On April 15, 2022, Defendants in this private, class-action antitrust case against various colleges filed a motion to dismiss. ECF No. 147. Plaintiffs filed their opposition to the motion to dismiss on June 10, 2022. ECF No. 164. Defendants' reply is due July 15, 2022. ECF No. 139. The United States moves for leave to file a Statement of Interest in this case because it has a significant interest in two issues raised by the pending motion to dismiss.

2. First, while certain agreements between “institutions of higher education at which all students admitted are admitted on a need-blind basis” are exempt from the antitrust laws under the “568 Exemption,” 15 U.S.C. § 1 note; Improving America's Schools Act of 1994, Pub. L. No. 103-382, title V, § 568, 108 Stat. 3518, 4060 (1994), the Exemption does not immunize agreements among schools that admit all students on a need-blind basis and those that do not. Defendants' contrary interpretation rests on several legal errors and erroneously superimposes an intent requirement on the scope of the Exemption.

3. Second, absent an exemption, the agreement challenged by Plaintiffs is subject to Section 1 of the Sherman Act. *See* 15 U.S.C. § 1. Here, Plaintiffs have adequately alleged that the challenged agreement is per se unlawful, consistent with how courts typically treat horizontal agreements on prices or discounts—including pricing or discount formulas. Plaintiffs have also adequately alleged that the challenged agreement violates Section 1 of the Sherman Act under the rule of reason. Because Plaintiffs have sufficiently alleged both a per se and a rule of reason claim, the Court need not resolve which mode of analysis applies at this stage.

4. The United States has the authority to file this Statement of Interest under 28 U.S.C. § 517, which authorizes the Attorney General of the United States or an officer of the

Department of Justice to “attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.” *See also Gil v. Winn Dixie Stores, Inc.*, 242 F. Supp. 3d 1315, 1317 (S.D. Fla. 2017) (agreeing that “28 U.S.C. § 517 . . . contains no time limitation and does not require the Court’s leave”). The United States also believes its participation in this case will assist the Court in adjudicating the pending motion to dismiss.

5. Counsel for Plaintiffs have informed the United States that they do not oppose the request. Counsel for Defendants have indicated that they will promptly respond to the request after reviewing the United States’ proposed Statement of Interest.

WHEREFORE, pursuant to Local Rule 5.6, the United States hereby requests leave to file its Statement of Interest in this matter. *See* Ex. A.

Respectfully submitted,

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Dated: July 7, 2022

s/ Eric D. Dunn

ERIC D. DUNN

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Attorneys for the United States of America

**CERTIFICATE OF SERVICE**

I hereby certify that on July 7, 2022, I electronically filed the foregoing brief by using the CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

/s/ Eric D. Dunn

ERIC D. DUNN